

Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

IN RE CYTODYN STOCKHOLDER
DERIVATIVE LITIGATION

Master File No. 3:21-cv-05422-RJB

**STIPULATED MOTION AND
[PROPOSED] ORDER CONSOLIDATING
ACTIONS**

Noted for Consideration: September 7, 2021

BILLIE RAY HENSLEY, Derivatively on
Behalf of CYTODYN, INC.,

Civil Action No. 3:21-cv-05593-SKV

Plaintiff,

v.

NADER Z. POURHASSAN, PH.D.,
MICHAEL MULHOLLAND, SCOTT A.
KELLY, M.D., JORDAN G.
NAYDENOV, ALAN P. TIMMINS, and
SAMIR R. PATEL, M.D.,

Defendants,

and

CYTODYN, INC.,

Nominal Defendant.

STIPULATED MOTION AND [PROPOSED] ORDER
CONSOLIDATING ACTIONS - 1
(No. 3:21-cv-05422-RJB)

Davis Wright Tremaine LLP
LAW OFFICES
Suite 3300
920 Fifth Avenue
Seattle, WA 98104-1610
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1 WHEREAS, on June 4, 2021, plaintiff David Berndt filed his verified shareholder
2 derivative complaint against defendants Scott A. Kelly, Nader P. Pourhassan, Jordan G.
3 Naydenov, Alan P. Timmins, Samir R. Patel, and Michael Mulholland (collectively,
4 “Defendants”) on behalf of CytoDyn, Inc. (“CytoDyn” or the “Company”) (the “Berndt
5 Action”);

6 WHEREAS, on June 25, 2021, plaintiff Christopher Lavin filed his verified shareholder
7 derivative complaint on behalf of the Company against Defendants (the “Lavin Action”);

8 WHEREAS, by Order dated August 13, 2021 (the “Consolidation Order”), the Court
9 consolidated the Berndt Action and the Lavin Action for all purposes (the “Consolidated
10 Action”) and appointed Co-Lead Counsel and Liaison Counsel for the Consolidated Action;

11 WHEREAS, Paragraph 8 of the Consolidation Order provides, in relevant part, that the
12 Consolidation Order “shall apply to each action arising out of the same transactions and
13 occurrences and asserting direct and/or derivative state law claims filed in this Court or
14 transferred here,” and that “the terms of all orders, rulings, and decisions in the Consolidated
15 Action shall apply to all later shareholder derivative actions instituted herein;”

16 WHEREAS, on August 18, 2021, plaintiff Billie Hensley filed his verified shareholder
17 derivative complaint against the Defendants on behalf of the Company (the “Hensley Action”);

18 WHEREAS, Plaintiffs in the Consolidated Action and the Hensley Action agree that the
19 Hensley Action arises out of the same transactions and occurrences as the Consolidated Action
20 and that the administration of justice would be best served by consolidating the Hensley Action
21 with and into the Consolidated Action;

22 WHEREAS, without waiving any rights, arguments or defenses, Defendants agree that
23 the Hensley Action should be consolidated with and into the Consolidated Action;

WHEREAS, this stipulation is not a waiver of any of the parties’ rights, remedies,
claims, or defenses;

1 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by the parties
2 hereto, through their undersigned counsel, subject to the approval of the Court, as follows:

3 Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the Hensley Action is
4 consolidated with and into the Consolidated Action for all purposes, including pretrial
5 proceedings, trial, and appeal;

6 All terms of the Consolidation Order shall apply to the Hensley Action; and The Parties
7 to this Stipulation agree that any Defendant in the Hensley Action who has been properly
8 served, has agreed to accept service, or who is served in the future, need only answer or
9 otherwise respond to any consolidated complaint filed in the Consolidated Action, and need not
respond to the pending complaint in the Hensley Action.

10 Dated: September 7, 2021

By: /s/ Benjamin T.G. Nivison

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18 Dated: September 7, 2021

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23 STIPULATED MOTION AND [PROPOSED] ORDER
CONSOLIDATING ACTIONS - 3
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Co-Lead Counsel for Plaintiffs

Dated: September 7, 2021

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Dated: September 7, 2021

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2
3
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5 Dated: September 7, 2021

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12
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14 *Defendants Scott A. Kelly, Nader P. Pourhassan,*
15 *Jordan G. Naydenov, Alan P. Timmins, Samir R.*
16 *Patel, and Michael Mulholland*

17 * * *

18
19 IT IS SO ORDERED THIS ____ DAY OF _____, 2021.

20
21 _____
22 HONORABLE ROBERT J. BRYAN
23 UNITED STATES DISTRICT JUDGE

STIPULATED MOTION AND [PROPOSED] ORDER
CONSOLIDATING ACTIONS - 5
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